

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA, )  
                                  )  
                                  )  
Plaintiff,                   )  
                                  )  
                                  )  
v.                             )                           Case No. CR-24-00076-PRW  
                                  )  
                                  )  
JOSHUA WILLIAM NEALIS,    )  
                                  )  
                                  )  
Defendant.                   )

**ORDER**

Before the Court is Defendant Joshua William Nealis's Motion to Dismiss the Indictment as Unconstitutional (Dkt. 28). On February 20, 2024, a federal grand jury returned an indictment charging Mr. Nealis with one count of violating 18 U.S.C. § 922(g)(1). Mr. Nealis's motion argues that § 922(g)(1) violates the Second Amendment.

In 2009, the Tenth Circuit in *United States v. McCane* rejected a post-*Heller* challenge to the constitutionality of § 922(g)(1),<sup>1</sup> relying on the Supreme Court's statement in *District of Columbia v. Heller* that ““nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons[.]””<sup>2</sup> Although Mr. Nealis impliedly argues that the Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*<sup>3</sup> invalidates *McCane*, the Tenth Circuit recently reaffirmed *McCane*'s

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<sup>1</sup> *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009).

<sup>2</sup> *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008)).

<sup>3</sup> 142 S. Ct. 2111 (2022).

holding in *Vincent v. Garland*.<sup>4</sup> *McCane* therefore remains binding precedent that this district court is duty bound to follow. Accordingly, Mr. Nealis's Motion to Dismiss the Indictment as Unconstitutional (Dkt. 28) is **DENIED**.

**IT IS SO ORDERED** this 29th day of April 2024.



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PATRICK R. WYRICK  
UNITED STATES DISTRICT JUDGE

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<sup>4</sup> 80 F.4th 1197, 1202 (10th Cir. 2023) (“*McCane* . . . upheld the constitutionality of the federal ban for any convicted felon’s possession of a firearm. . . . We thus follow *McCane* and affirm the dismissal.”).